

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
 AURANGABAD BENCH, AT AURANGABAD.**

Criminal Application No. 5105 of 2016

District : Dhule

1. Gorakh s/o. Chatru Rathod,
 Age : 55 years,
 Occupation : Agriculture.
2. Nanabhau Gorakh Rathod,
 Age : 20 years,
 Occupation : Agriculture.
3. Pravin Gorakh Rathod,
 Age : 26 years,
 Occupation : Agriculture.

All R/o. New Saiyyed Nagar,
 Taluka : Sakri,
 District : Dhule.

.. Applicants.

versus

The State of Maharashtra,
 Through Police Inspector,
 Sakri Police Station, Sakri,
 Taluka : Sakri,
 District : Dhule.

.. Respondent.

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Mr. Yogesh B. Bolkar, Advocate, for applicants.

*Mr. S.P. Sonpawale, Addl. Public Prosecutor, for
 the respondent.*

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With

Criminal Application No. 5160 of 2016

District : Dhule

Sachin s/o. Vijay Rathod,
 Age : 55 years,
 Occupation : Agriculture,
 R/o. New Saiyyed Nagar,
 Taluka : Sakri,
 District : Dhule.

.. Applicant.

versus

The State of Maharashtra,
 Through Police Inspector,
 Sakri Police Station, Sakri,
 Taluka : Sakri,
 District : Dhule.

.. Respondent.

.....

Mr. Yogesh B. Bolkar, Advocate, for the applicant.

*Mr. S.P. Sonpawale, Addl. Public Prosecutor, for
 the respondent.*

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With

Criminal Application No. 5304 of 2016

District : Dhule

Chaitram s/o. Shankar Rathod,
 Age : 65 years,
 Occupation : Nil,
 R/o. New Sayyad Nagar Gaon,
 Taluka : Sakri,
 District : Dhule.

.. Applicant.

versus

The State of Maharashtra,
 Through Police Inspector,

Sakri Police Station, Sakri,
 Taluka : Sakri,
 District : Dhule.

.. Respondent.

.....

Mr. Rajendra S. Deshmukh, Advocate, for the applicant.

*Mr. S.P. Sonpawale, Addl. Public Prosecutor, for
 the respondent.*

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With

Criminal Application No. 5305 of 2016

District : Dhule

Sachin s/o. Chaitram Rathod,
 Age : 29 years,
 Occupation : Labourer,
 R/o. New Sayyad Nagar Gaon,
 Taluka : Sakri,
 District : Dhule.

.. Applicant.

versus

The State of Maharashtra,
 Through Police Inspector,
 Sakri Police Station, Sakri,
 Taluka : Sakri,
 District : Dhule.

.. Respondent.

.....

Mr. Rajendra S. Deshmukh, Advocate, for the applicant.

*Mr. S.P. Sonpawale, Addl. Public Prosecutor, for
 the respondent.*

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CORAM : A.M. BADAR, J.

DATE : 13TH OCTOBER 2016

ORAL ORDER:

Six applicants who are accused in Crime No. 68/2016 registered with Police Station, Sakri, District Dhule, for offences punishable under Sections 302, 143, 147, 148, 149, 323, 504 and 506 of the Indian Penal Code, by these applications, are seeking their release on bail after filing of the charge-sheet.

2. Names of these applicants are re-produced for the sake of convenience. They are Gorakh s/o. Chatru Rathod, Nanabhau s/o. Gorakh Rathod, Pravin s/o. Gorakh Rathod, Sachin s/o. Vijay Rathod, Chaitram s/o. Shankar Rathod and Sachin s/o. Chaitram Rathod.

3. Heard learned Counsel appearing for all applicants at great length of time. By taking me through statement of each eye witness, it was argued that applicants are framed in the crime in question at the instance of relatives of deceased Vinod s/o. Ramsing Pawar. According to learned Counsel appearing for applicants, statements of witnesses are belatedly recorded. Those statements are not consistent. Apart from the FIR lodged by Ramsing

s/o. Gulab Pawar, his two supplementary statements are also recorded. Ramsing Pawar had not attributed any role in his statements to Chaitram Rathod, who is old man aged about 65 years. He was called at the spot for settling dispute between the quarreling parties. Similarly it was argued that name of Sachin s/o. Vijay Rathod is also not disclosed by the informant initially. On 16.05.2016 also his name is not disclosed by the informant. No overt act is attributed to applicants in the crime in question. It was further argued that nothing was recovered at the instance of applicants except from Gorakh Rathod and Pravin Rathod. According to the learned Counsel for applicants, not a single applicant is concerned with the crime of murder of Vinod Pawar. It is argued that co-accused have already been released on bail after filing of the charge-sheet. Reasons for rejection of applications of these applicants are tampering of evidence of prosecution, etc. Care of such apprehension can be taken by imposing appropriate conditions. My attention was also drawn to statement of main accused Dnyaneshwar @ Nana s/o. Madhukar Rathod to demonstrate that he had confessed the crime before Police and therefore it can be safely concluded that other accused are not concerned with the crime in question.

4. The learned Addl. Public Prosecutor opposed the application by contending that accused persons

have formed an unlawful assembly with common object and their complicity in the crime in question is established from statements of witnesses recorded by the prosecution.

5. I have carefully considered rival submissions and also perused the entire charge-sheet. The incident in question took place on 13.05.2016 at Sayyad Nagar (Nava), Taluka Sakri, District Dhule. This incident was preceded by the incident dated 12.05.2016. According to the prosecution case, Vinod Pawar was serving in Armed Forces of the State. He had returned to village Sayyad Nagar on leave. Initially, according to the prosecution case, Vinod Pawar took exception to act of Dnyaneshwar @ Nana Rathod of teasing his cousin Mony Pawar. However, subsequently it is clarified that Dnyaneshwar @ Nana Rathod was in fact teasing Nikita - sister of Vinod Pawar (since deceased) and exception to his act was taken on 11.05.2016 and 12.05.2016. This has resulted in quarrel between Vinod Pawar on one side and Dnyaneshwar @ Nana Rathod as well as his associates on other side. To pacify them, at about 08.00 a.m. of 13.05.2016, a meeting was convened. It was to be held in presence of Panch witnesses with active participation of husband of Sarpanch of the village namely Gulab Dalpat Chavan. According to the prosecution case, in this meeting, initially there was scuffle which took turn of riot and in that riot,

Vinod Pawar was fatally wounded apart from injuring members of the prosecution party.

6. Perusal of the FIR lodged by Ramsing Pawar - father of deceased Vinod Pawar shows presence of Panchas and name of applicant Chaitram Rathod is shown as one of the mediator who was present for pacifying the quarreling parties. FIR does not attribute any overt act on the part of applicant Chaitram Rathod. Name of applicant Sachin s/o. Vijay Rathod is also not mentioned in the FIR. Similar is the position so far as supplementary statement of informant recorded on 16.05.2016 is concerned. Similarly name of applicant Sachin s/o. Chaitram Rathod is not mentioned either in the FIR or supplementary statement of the informant recorded on 16.05.2016.

7. Perusal of the charge-sheet goes to show that there was gathering of several persons on 13.05.2016 for settling the dispute. It is also seen from the charge-sheet that this process of settlement took a violent turn erupting riot and the incident took place in quick succession. The matter will have to be viewed from the context of the events which took place in the said meeting in rapid succession. In such situation, ordinarily it so happens that witnesses are overwhelmed and overtaken by events which they had not anticipated. There is element of

surprise when such incident took place. Normally, in such situation, mental faculty of witnesses is not attuned to absorb details of such events which took place in rapid succession. Therefore it is not expected that each witness will recall accurately the sequence of events which takes place in rapid succession in a short span of time. He is bound to mix up the things.

8. Keeping in mind this aspect of the matter, we will have to scrutinize the material gathered by the investigator in order to infer whether applicants were members of an unlawful assembly with common object of killing Vijay Pawar and assailing other members of the prosecuting party. If that is established, then there is no need to attribute or infer specific overt act of each and every member of such unlawful assembly. An object is entertained in the human mind. It is merely a mental state or attitude. Therefore common object will have to be ascertained from acts which persons who are members of such assembly commits and the arms they carries or their behaviour before, during or after the incident.

9. It is seen from the charge-sheet that deceased Vinod Pawar was aggrieved by eve teasing at the instance of main accused Dnyaneshwar @ Nana Rathod. What happened in the meeting for resolving the dispute is disclosed by the informant in his own

way by stating that Gorakh Rathod, Nanabhau Rathod, Pravin Rathod and others abused him as well as his son Vinod Pawar. The informant further alleged that Dnyaneshwar @ Nana Rathod took out a sword stick and gave blow thereof on abdomen of Vinod Pawar. The informant claims to have been beaten by accused persons. He also named injured who suffered injuries in the incident. One can find names of applicants Gorakh Rathod, Nanabhau Rathod and Pravin Rathod in the FIR.

10. Malkhan Pawar is one of the injured who suffered blow of knife on his chest in this incident. His statement shows that deceased Vinod Pawar at the time of the incident was held by applicant Sachin s/o. Chaitram Rathod, applicant Sachin s/o. Vijay Rathod and applicant Pravin Rathod apart from another accused persons and blow of sharp edged weapon was given to Vinod Pawar by Nana s/o. Madhukar Rathod. Another injured witness is Dnyaneshwar s/o. Lashkar Pawar. He is naming applicant Pravin Rathod as one of the persons who held deceased Vinod Pawar when the co-accused gave blow of knife to him.

11. Pravin s/o. Lashkar Pawar is stating that applicant Pravin s/o. Gorakh Rathod was one of the persons who caught hold of deceased Vinod Pawar.

12. Gulab s/o. Dalpat Chavan is husband of

Sarpanch. He has stated that applicant Gorakh Rathod and his sons were beating others by sticks, so also abusing others during the course of the incident.

13. Rohidas s/o. Ananda Rathod is another injured witness. He is stating that applicant Sachin s/o. Chaitram Rathod, applicant Sachin s/o. Vijay Rathod and applicant Pravin s/o. Gorakh Rathod had assaulted Vinod Pawar.

14. Pankaj Pawar is son of injured Malkhan s/o. Gulab Pawar. His statement discloses that Prakash s/o. Kashinath Rathod had given a blow of sharp edged weapon to Malkhan Pawar. Apart from this, Pankaj Pawar is stating that applicant Chaitram Rathod along with others were assaulting deceased Vinod Pawar. He was lying in injured condition while blood was oozing from his injuries. Apart from this, there are statements of other witnesses also who have stated what they had seen during course of the incident. At this juncture, those statements are not relevant so far as role of these applicants in the crime in question is concerned.

15. It is thus seen that except applicant Chaitram s/o. Shankar Rathod, other applicants are given role in the crime in question by different witnesses. Name of Chaitram Rathod is disclosed only by Pankaj s/o. Malkhan Pawar and that too, when Vinod

Pawar (since deceased) was stated to be lying with injuries and blood oozing from his injuries. Name of Chaitram Rathod is not disclosed by the informant - father of the deceased, who had seen the assault on his son Vinod Pawar. Other witnesses, who had disclosed how Vinod Pawar was done to death by accused persons, are not naming applicant Chaitram Rathod as one of the persons who was involved in the crime in question. Rather statement of the informant apart from his FIR, goes to show that Chaitram Rathod, who is old person of 65 years of age, was called as one of the Panch witness to settle the dispute between the parties. Therefore, at this stage, it is hard to believe statement of Pankaj Pawar in order to attribute membership of unlawful assembly to applicant Chaitram Rathod. However, so far as rest of applicants are concerned, statements of witnesses, as stated in foregoing paras, are attributing overt act in the incident to them. Even Gulab s/o. Dalpat Chavan, who was heading the meeting, had stated that applicant Gorakh Rathod and his sons were beating others by sticks.

16. In this view of the matter, prima facie it appears that rest of applicants / accused persons, except applicant Chaitram s/o. Shankar Rathod, had formed an unlawful assembly with a common object and in that process, indulged in rioting and murdering Vinod Pawar and injuring prosecution witnesses. It

is not pointed out that this aspect of liability of members of unlawful assembly was considered while releasing co-accused on bail by the learned Addl. Sessions Judge. Instead of issuing notice to accused for canceling their bail, the matter is left to the discretion of the prosecution.

17. In the result, I pass the following order :-

(a) Criminal Application No. 5105 of 2016, Criminal Application No. 5160 of 2016 and Criminal Application No. 5305 of 2016 are rejected.

(b) Criminal Application No. 5304 of 2016 is allowed. Applicant therein namely, Chaitram s/o. Shankar Rathod - accused in the above crime, be released on bail on his executing P.R. Bond in the sum of Rs. 25,000/- and on furnishing one or more solvent sureties of the like amount.

(b-1) As conditions of this order, applicant Chaitram s/o. Shankar Rathod shall abide by the following directives :-

(i) Applicant Chaitram s/o. Shankar Rathod shall not, directly or indirectly, make any inducement, threat or promise to any persons acquainted with the facts of the case so as to dissuade them from disclosing

such facts either to the Court or to any police officer.

(ii) Applicant Chaitram s/o. Shankar Rathod shall not tamper with the prosecution evidence in any manner and shall cooperate the learned trial Judge in expeditious disposal of the trial against him.

(iii) Applicant Chaitram s/o. Shankar Rathod shall not repeat commission of similar type of offences in future.

18. Applications stand disposed of in the above terms.

19. Needless to mention that the observations made in this order are prima facie in nature which shall have no bearing on trial of the case.

(A.M. BADAR)
JUDGE

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